PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	CASE NO. 1:18CR0331-16
Plaintiff,	)	
	)	JUDGE BENITA Y. PEARSON
v.	)	
	)	
MYRON L. PRYOR,	)	**MEMORANDUM OF OPINION**
	)	**AND ORDER**
Defendant.	)	[Resolving ECF No. 313]

Pending is Defendant Myron L. Pryor's Motion to Suppress Wiretap Evidence (ECF No. 313). The Court has been advised, having reviewed the record, the parties' briefs,[1] and the applicable law. For the reasons set forth below, the motion is denied.

I. Background

On October 6, 2017, upon application of the Government, U.S. District Judge Solomon Oliver Jr. authorized the interception of wire communications to and from cellular telephone number (216) 534-4743 ("TT-1"), known to be possessed and used by Co-Defendant Troy Davis. The Government received authorization to continue monitoring TT-1. The Drug Enforcement Administration (the "DEA") monitored TT-1 from approximately October 6, 2017 until December 6, 2017.

[1] Pryor's permissive reply memorandum was due on January 2, 2019. Minutes of Proceedings dated December 18, 2018. Defendant, however, did not file a reply memorandum in support of the within motion.

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On October 30, 2017, upon application of the Government, Judge Oliver issued an Order authorizing the interception of wire communications to and from cellular telephone number (440) 219-5052 ("TT-3"), also known to be possessed and used by Co-Defendant Troy Davis. The Government received authorization to continue monitoring TT-3. This line was monitored from approximately October 30, 2017 until February 14, 2018.

In total, there were approximately nine lines monitored throughout the investigation in the case at bar. The owners of each line were Co-Defendants Troy Davis, Elonzo Davis, or Leon Lamont Washington. Many of the lines were renewed for continued authorization multiple times. Each of the affidavits, including those for TT-1 and TT-3, outlined a several-month long investigation of Troy Davis, Elonzo Davis, and their drug associates. DEA Special Agent Joseph Behlke swore to the facts in the affidavits. The judicially authorized wiretaps revealed much of the *modus operandi* of this drug trafficking organization (the "DTO"), including the scope of their customer base, their sources of supply, the stash locations of the drugs, the vehicles and locations they used to sell drugs, their use of proceeds to buy even more narcotics, and other information. The individuals associated with the DTO often called or texted Troy Davis and the other owners of the tapped lines to purchase or supply narcotics.

Defendant Myron L. Pryor ("Pryor") is one of 25 defendants named in the Indictment (ECF No. 1) charging the members of the DTO with, among other crimes, conspiracy to distribute and to possess with intent to distribute various controlled substances. Pryor was intercepted only on lines TT-1 and TT-3. He was never listed as a target interceptee or a target subject in the affidavits. Based on the intercepts and surveillance in this case, the agents

determined that Pryor was a lower level distributor who purchased drugs from Defendant Troy Davis, and then re-distributed them to other users, while also using some of the drugs himself. The Government summarizes that "[t]he bulk of calls [in] which [Pryor] was intercepted took place in November and December 2017. [And that,] in other conversations with Troy Davis, [Pryor] regularly discussed cooking cocaine [into] cocaine base (crack), and [Pryor] cooked cocaine powder into cocaine base to sell to other customers." Government's Response in Opposition (ECF No. 336) at PageID #: 1294-95.

II. Analysis

Pryor moves the Court to suppress evidence stemming from the wiretaps. While the motion sets forth a recitation of the standards required to procure a Title III authorization and adequately addresses the law regarding the requisite probable cause necessary to receive authorization, the motion is bereft of facts. It simply states that the wiretaps "against and involving Mr. Pryor from November 1, 2017 through December 16, 2017" should be suppressed because they were "obtained without the proper foundations for the authorization" of the Title III interceptions. ECF No. 313 at PageID #: 1099. Pryor does not specify which affidavits apply to his concerns, nor does he elaborate on what proper foundation may have been lacking from such affidavit. No affidavits or any other factual evidence is attached to the within motion. In addition, Pryor does not explain what part of the wiretaps he challenges, beyond their "foundation," such as probable cause, necessity, minimization or other aspects of the Title III statute and process.

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A. Pryor lacks standing[2] to challenge the wiretap affidavits for TT-1 and TT-3.

In addition to lacking specifics, Pryor fails to assert a possessory interest in the target phones and/or participation in the intercepted calls to establish standing to challenge minimization.[3] Title III allows an aggrieved person to move to suppress the contents of intercepted communications. Title 18, Section 2518(10)(a), U.S.C., provides, in pertinent part:

> Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted pursuant to this chapter [18 U.S.C. § 2510 *et seq.*], or evidence derived therefrom, on the grounds that--
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> (i) the communication was unlawfully intercepted;
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> (ii) the order of authorization or approval under which it was intercepted is insufficient on its face; or
>
> (iii) the interception was not made in conformity with the order of authorization or approval.
>
> * * *

An "'aggrieved person' means a person who was a party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed." 18 U.S.C. § 2510(11). A defendant who claims to be an aggrieved person bears an obligation to make a prima facie showing, beyond mere assertions of standing, that he fits within the definition of an

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[2] In *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998), the U.S. Supreme Court directed the lower courts to decide questions on standing in civil cases before the merits issues are decided.

[3] Title III "does not forbid the interception of all nonrelevant conversations, but rather instructs the agents to conduct the surveillance in such a manner as to 'minimize' the interception of such conversations." *Scott v. United States*, 436 U.S. 128, 140 (1978).

aggrieved person. *United States v. Apple*, 915 F.2d 899, 905 (4th Cir. 1990); *United States v. Faulkner*, 439 F.3d 1221, 1223 (10th Cir. 2006); *see also United States v. Holmes*, 537 F.2d 227, 232 (11th Cir. 1976) (a defendant claiming standing has the burden of proof to establish his status as such).

Traditional standing rules apply to Title III motions to suppress. A defendant has standing with regard to (1) conversations in which the accused himself participated, and (2) all conversations occurring on the accused's premises, regardless of whether he participated in the particular conversation in any way. *Alderman v. United States*, 394 U.S. 165, 189 (1969) (Harlan, J. concurring in part and dissenting in part). Applying these traditional rules to the context of cell phones, in order to have standing, a defendant must admit that he participated in the calls intercepted by the wiretap and/or that he had a possessory interest in the target phone. *See United States v. McCafferty*, 772 F. Supp.2d 863, 870 (N.D. Ohio 2011) (Lioi, J.) (collecting authority and limiting standing to those calls in which the defendant was either a participant or which occurred on her premises); *United States v. Azano Matsura*, 129 F. Supp.3d 975, 979 (S.D. Cal. 2015) (holding a defendant may move to suppress the fruits of a wiretap only if he was a participant in an intercepted conversation or if such conversation occurred on his premises).

A defendant must establish that he has standing to properly challenge a wiretap, and prove that he has at least some expectation of privacy. *See United States v. Suquet*, 547 F. Supp. 1034, 1038 (N.D. Ill. 1982) ("[W]hen objecting to the introduction of a given call X, a defendant must show that he or she was a party to call X or that he or she has a privacy interest in the

premises housing the tapped phone.") (citing *Alderman*, 394 U.S. at 176); *accord* *United States v. Fury*, 554 F.2d 522, 526 (2d Cir. 1977) (A person's status as an "aggrieved person" under Title III does not confer upon them standing to challenge minimization); *United States v. Gallo*, 863 F.2d 185, 192 (2d Cir. 1988) (holding that because the defendants challenging the minimization techniques had no privacy interest in the home or the phone tapped, were not named as targets and were not part of the conversations that were allegedly improperly minimized, they lacked standing to challenge the minimization procedures); *United States v. Skinner*, No. 3:06-CR-100, 2007 WL 1556596, at *15, *17 (E.D. Tenn. May 24, 2007), report and recommendation adopted at *1 (finding defendant lacked standing to assert a Fourth Amendment protected interest in cell phone not subscribed in his name and had no statutory right to privacy in the phone). Even defendants who are named as targets of the investigation may lack standing to challenge law enforcement's minimization techniques if they did not have an expectation of privacy in the residence in which the tapped telephone was located. *United States v. Ruggiero*, 928 F.2d 1289, 1303 (2d Cir.), *cert. denied*, 502 U.S. 938 (1991); *see also* *United States v. Poeta*, 455 F.2d 117, 122 (2d Cir.) (finding defendant lacked standing to raise minimization challenge concerning wiretap of co-defendant's telephone), *cert. denied*, 406 U.S. 948 (1972); *United States v. Degaule*, 797 F. Supp.2d 1332, 1363 n. 24 (N.D. Ga. 2011), report and recommendation adopted at 1344 (denying motion to suppress intercepted communications). Furthermore, Pryor has no right to suppress damaging evidence obtained in violation of rights other than his own.[4] *United*

[4] It is worth noting that no other interceptee has moved to suppress the wiretap evidence.

States v. Caicedo, 85 F.3d 1184, 1191 (6th Cir. 1996) (evidence tainted by illegal arrest of co-conspirator is admissible against defendant whose Fourth Amendment rights were not violated).

Pryor was afforded the opportunity to respond to the Government's standing argument. *See* Minutes of Proceedings dated December 18, 2018. However, he has not filed a supplemental submission demonstrating his standing to challenge minimization.

B. Even if Pryor has standing to challenge the wiretap affidavits for TT-1 and TT-3, the motion lacks specificity for the Court to properly address the merits.

"[W]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request." *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978). The same standard applies to warrants for wiretaps. *United States v. Giacalone*, 853 F.2d 470, 474-75 (6th Cir. 1988).

Assuming *arguendo* that Pryor has standing to challenge the wiretap affidavits, the within motion does not allege, even in cursory fashion, the facts necessary for the Court to determine what exactly Pryor challenges. Pryor does not specify what is "improper" about the wiretap affidavits under which he was intercepted in November and December 2017. Therefore, the motion does not warrant an evidentiary hearing.

III. Conclusion

Accordingly, Defendant Myron L. Pryor's Motion to Suppress Wiretap Evidence (ECF No. 313) is denied without an evidentiary hearing.

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Counsel are reminded that this case is set for a jury trial on January 22, 2019 at 9:00 a.m. *See* Order (ECF No. 148); Minutes of Proceedings dated December 18, 2018; Criminal Pretrial and Trial Order (ECF No. 126).

IT IS SO ORDERED.

January 4, 2019
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge